

908 KAR 1:390. Voluntary Employer Substance Use Program (VESUP).

RELATES TO: KRS 222.215

STATUTORY AUTHORITY: KRS 222.215

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.215 requires the cabinet to promulgate administrative regulations to implement employer-facilitated access to substance use disorder treatment for employees who screen positive during an employment-related drug screening. This administrative regulation establishes a voluntary program in which employers may facilitate employee access to substance use disorder treatment, rather than terminate or refuse hire, and sets criteria for that program.

Section 1. Definitions.

(1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "Employer" means any employer that agrees to participate in the Voluntary Employer Substance Use Program.

Section 2. Voluntary Employer Substance Use Program (VESUP) policy.

(1) An employer that elects to participate in VESUP shall have the following elements written in their workplace drug and alcohol policy:

(a) Policy rationale and goals that include:

1. Reason for policy;
2. Intended outcomes of the policy; and
3. How and with whom the policy was developed;

(b) Expectations and compliance elements that include:

1. When and where the policy applies;
2. Employee positions the policy applies to;
3. Expected employee behavior; and
4. Prohibited behaviors and substances;

(c) Drug screening procedures and guidelines, including:

1. A list of screened substances;
2. Screening facilities approved by the cabinet;
3. Number of times an employee shall be screened, including minimums and maximums; and
4. Screening confidentiality and privacy protocols;

(d) Resources for evidence-based substance use disorder prevention; and

(e) A process for identifying licensed substance use disorder treatment providers.

(2) An employer's VESUP policy shall be accessible upon request to all employees and the cabinet.

(3) Employee compliance with the employer's VESUP policy shall be a condition of employment.

Section 3. Employee Participation in Substance Use Disorder Treatment.

(1) Employers participating in the VESUP shall require employee participation in licensed substance use disorder treatment services as a condition of employment to work within their area of expertise or professional licensure as applicable if:

(a) An employee screens positive during an employment-related drug screening; and

(b) A biopsychosocial clinical assessment performed by a licensed substance use disorder treatment provider determines the need for substance use treatment.

(2) If a licensed substance use disorder treatment provider determines via biopsychosocial clinical assessment that substance use disorder treatment is not necessary, the employee shall comply with the recommendations deemed appropriate by the clinical assessment as a condition of employment.

(3) An employee identified in subsection (1) of this section shall follow the treatment plan as written by the licensed substance use disorder treatment provider.

Section 4. Employer Participation in Substance Use Disorder Treatment.

(1) An employer shall agree to allow the employee to follow the treatment plan written by a licensed substance use disorder treatment provider as described in Section 3(3) of this administrative regulation.

(2) An employer shall not penalize an employee for compliance with the treatment plan described in Section 3(3) of this administrative regulation.

Section 5. Records.

(1) An employer shall secure all records and information concerning an employee's substance use screening and treatment.

(2) Records as specified in subsection (1) of this section shall include:

(a) Results of employee drug screens;

(b) Documentation of employee participation and compliance in substance use disorder treatment services.

(3) Records specified in this section shall be maintained:

(a) Separately from the employee's personnel file;

(b) In a secure location; and

(c) Disposed of in accordance with all state and federal laws regarding protected health information.

(4) Records specified in this section shall be disclosed in accordance with KRS 222.215(6)(e).

Section 6. Program Requirements.

(1) An employee that violates the employer workplace drug and alcohol policy by screening positive during an employment-related drug screening, rather than being terminated or refusing hire, shall have the option to receive services from a licensed substance use disorder treatment provider for:

(a) An initial comprehensive biopsychosocial clinical assessment using a multidimensional assessment tool, that complies with the most current edition of the American Society of Addiction Medicine (ASAM) criteria to determine the appropriate level of care in accordance with 908 KAR 1:370, Section 18; and

(b) If deemed appropriate, creation of a written treatment plan pursuant to 908 KAR 1:370, Section 19.

(2) Employees specified in subsection (1) of this section, that elect to participate in this program, shall provide their employer with signed consent authorizing the employer to receive documentation confirming employee participation and compliance with recommendations of the clinical assessment.

(3) Employees specified in subsection (1) of this section, shall be informed of all FDA-approved options to treat substance use disorder from the employer or the cabinet when referred by the employer.

Section 7. Referral Information. Employers may find the following information at <http://dbhdid.ky.gov/>:

(1) A list of some of the licensed substance use disorder treatment providers available;

(2) Employer education on addressing substance use in the workplace; and

(3) Screening facilities approved by the cabinet.

(47 Ky.R. 2222, 48 Ky.R. 441; eff. 9-22-2021.)